

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 93 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GSFC

Versus

R.MINAXI SINNAIYA

Appearance:

MR DS NANAVATI for Petitioner
MR BS PATEL for Respondent No. 2
MR HJ TRIVEDI for respondent NO.1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 15/07/96

ORAL JUDGEMENT

Admit. Service of notice is waived by learned advocate Mr H.J. Trivedi for respondent No.1 and Mr B.S. Patel for respondent No.2. Upon joint request, matter is ordered to be heard today finally.

In this appeal under section 173 of the Motor Vehicles

Act, 1988 (MV Act), the appellant Gujarat State Fertilizer Company Limited (GSFC) has questioned the order dated 14th November, 1995 recorded below Ex.5 & 18 in Motor Accident Claim Petition No.508/93 by the MAC Tribunal (Auxi I), Vadodara.

The impugned order came to be passed under section 140 of the MV Act on the ground of no fault liability. The respondent No.1, original claimant, claimed an amount of Rs.5 lacs by way of compensation on the ground that the husband of the respondent No.1 had lost his life on 13.6.92 at about 1.15 a.m. in the GSFC premises in a vehicular accident. The deceased was sleeping on a heap of sand lying in the compound of the GSFC and at that time driver (original opponent No.1) had driven shovel loader machine No.22 of the appellant GSFC in a rash and negligent manner whereby the deceased was crushed who on being taken to the hospital was declared dead.

The GSFC in the written statement, inter alia, contended that the shovel loader machine did not belong to it and the driver was not driving the said machine at the relevant time for and on behalf of the GSFC or under its instructions. It also raised the contention that the said machine cannot be said to be a vehicle as defined under the MV Act. It also further contended that the said vehicle was not required to be registered with the authority under the Motor Vehicles Act. The GSFC also raised a contention by giving an application Ex.18 whereby the Tribunal was requested to decide the aforesaid point as preliminary issue. After considering the rival contentions, the Tribunal granted the application holding that the shovel loader machine could be said to be a vehicle under the Motor Vehicles Act. Therefore, the Tribunal directed the appellant GSFC to pay an amount of Rs.25,000/- to the original claimant by way of interim relief under no fault liability under the provisions of section 140 of the Motor Vehicles Act. The impugned order came to be passed on 14.11.95. Being aggrieved by the said order, the original opponent No.2, GSFC, has now come up before this Court challenging the legality and validity of the said order.

Section 2(28) of the Motor Vehicles Act provides the definition of 'motor vehicle' or 'vehicle' which reads as under :

"28. "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal

source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty five cubic centimeters;"

It could very well be seen from the aforesaid definition that any vehicle which is mechanically propelled and adapted for use upon roads whether the power of propulsion is transmitted from an external or internal source is a vehicle. It also includes a chassis to which a body has not been attached and also a trailer but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty five cubic centimeters. The main contention of the appellant GSFC is that the shovel loader machine is not covered by the definition of "motor vehicle" as provided in section 2(28) of the MV Act. The question whether it is a vehicle or not in terms of section 2(28) of the Motor Vehicles Act could not be said to be a pure question of law. It could be said to be a question of law and fact. Whether it was used for running only in the factory premises, whether it was specially adapted for such use only in the factory premises or any other enclosed premises, whether the vehicle running upon fixed rails are the questions required to be investigated before reaching a final conclusion as to whether it could be said to be a vehicle covered under the said definition under the MV Act.

It is not clear from the impugned order as to what has happened to the dispute raised in application Ex.18. It is not clear from the final order also whether preliminary issue was raised or whether it was finally decided that the said shovel loader machine is a vehicle covered under the definition of 'motor vehicle' under the Motor Vehicles Act. The order portion of the impugned order shows that the application is granted. It appears that the Tribunal has granted application Ex. It does not show as to whether the application Ex.18 is granted or not. It also does not show as to whether it was decided or not.

There is a purpose and policy behind enacting the provisions of section 140 of the Motor Vehicles Act by

the Legislature. It has empowered the Tribunal to award interim compensation under no fault liability. Keeping in mind the underlying purport and design of section 140 of the Motor Vehicles Act and having regard to the facts and circumstances of the case, the ends of justice will be met if the following directions are given:

- (1) That the order to make payment of Rs.25,000/- to the petitioner-claimant as interim relief under no fault liability under section 140 of the MV Act is not required to be disturbed in view of the prima facie facts and circumstances emerging from the record of the case. As such while deciding the application under section 140 of the Motor Vehicles Act, the Court is not required to embark upon meticulous and detailed inquiry about the rival version.
- (2) The parties will be at liberty to raise the contentions about the nature of machine involved in the accident. In other words, the question as to whether shovel loader machine is a motor vehicle as defined under section 2(28) of the MV Act is kept open and the parties will be at liberty to lead evidence in support of their versions.
- (3) The amount of Rs.25,000/- as directed by the Tribunal shall be deposited by the appellant GSFC in the Tribunal and the Tribunal, in turn, shall invest the same in fixed deposit in any nationalised bank or in any other security where higher rate of interest could be obtained. The respondent-original-claimant shall not be entitled to create any charge or encumbrances on the same without the prior approval of the Tribunal till the disposal of the claim petition. However, the claimant will be at liberty to withdraw the interest only which will accrue periodically thereon.
- (4) The question raised in application Ex.18 is not decided here and the same is kept open.

Having regard to the facts and circumstances, the appeal is partly allowed with the the aforesaid directions with a caution that the Tribunal should not be influenced by the observations or any remarks made by this Court hereinbefore as the same pertain to deciding the question at the interlocutory stage for interim compensation. There shall be no order as to costs.

